

2/14/90

SB 15

***(Public School
Employees
Right to Strike)***

**Senate Finance Committee Meeting
SENATE BILL 15**

excerpts from testimony
SENATE RECORDS
MAY 6, 1989

DISCUSSION OF OPT OUT PROVISION

CARL ROSE, A.A.S.B.

Effecting the change under Title 23 would require cross references between the two titles in a number of areas (tenure, nonretention, etc.) Mr. Rose spoke to further problems surrounding the *opt-out provision under PERA*.

COMMITMENTS NOT TO CHANGE SB15

BOB MANNERS, N.E.A.

Senator Fischer directed a question to Mr. Manners, asking if he would be satisfied with PERA, class (3), or if an effort would be made to change the classification to (2). Mr. Manners answered that if the proposed draft legislation were to pass from committee, NEA would not seek to "change it on the floor or in the House."

SEN. DUNCAN

Senator Duncan directed attention to a May 6, 1989 memorandum from Carl Rose to Sen. Binkley and noted the following comment:

"Our fear is that there will not be commitments to keep the language as the Committee might pass it, that significant changes might be made on the Senate floor, in the House, or in conference committee..."

The Senator voiced his commitment that if the proposed bill moved from committee under Title 23, class (a) (3) he would not support further changes in the Senate, House, or conference committee.

**THIS COMMITMENT HAS BEEN BROKEN
SCHOOL BOARDS DO NOT SUPPORT SB15**

Alaska State Legislature



SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100

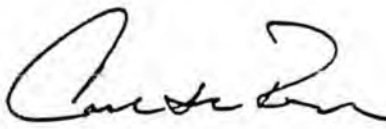
(907) 465-4766

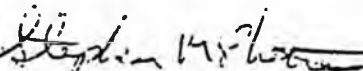
COMMITTEES
FINANCE
VICE CHAIR -
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

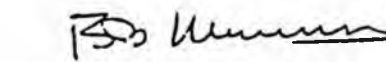
May 9, 1989

AASB, NEA-AK, and ACSA agree that they will support the version of Senate Bill 15 which passed the Senate on Sunday, May 7, 1989.

They agree to advocate for the bill in its present form and will not seek to amend, modify, or change it except as changes may be necessary to insure technical accuracy, or reflect mutual agreement.


Carl F. N. Rose
Executive Director
AASB


Steve McPhetres
Executive Director
ACSA


Bob Manners
Executive Secretary
NEA-AK



Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
Juneau, Alaska 99821

Phone:
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465-3765

HOUSE RULES COMMITTEE MEETING - WEDNESDAY, FEBRUARY 14TH, 1990

I N D E X

- I. AGREEMENT DOCUMENT FROM SENATOR DUNCAN'S OFFICE DATED
MAY 9, 1989

SENATE PASSED VERSION:

- II. CS FOR SENATE BILL NO. 15 (Finance) am
"An Act including public school employees in the Public
Employment Relations Act as class (a)(3) employees entitled
to a right to strike; and providing for an effective date."

PROPOSED HOUSE FINANCE VERSION:

- III. HOUSE CS FOR CS FOR SENATE BILL NO. 15 (Finance)
"An Act including public school employees in the Public
Employment Relations Act as class (a)(3) employees entitled
to a right to strike; and providing for an effective date."
- IV. LEGAL OPINION - Dated February 6, 1990 to Speaker Cotten
from Douglas B. Bailey / Attorney General

- V. FISCAL NOTES

Alaska State Legislature

I



SENATOR JIM DUNCAN

P. O. BOX V JUNEAU, ALASKA 99811-3100
(907) 465-4760

COMMITTEES:
FINANCE
VICE CHAIR -
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

May 9, 1989

AASB, NEA-AK, and ACSA agree that they will support the version of Senate Bill 15 which passed the Senate on Sunday, May 7, 1989.

They agree to advocate for the bill in its present form and will not seek to amend, modify, or change it except as changes may be necessary to insure technical accuracy, or reflect mutual agreement.

Handwritten signatures of Carl F. N. Rose and Steve McPhetres.

Carl F. N. Rose
Executive Director
AASB

Steve McPhetres
Executive Director
ACSA

Handwritten signature of Bob Manners.

Bob Manners
Executive Secretary
NEA-AK

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

IV
STEVE COWPER, GOVERNOR

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FAIRBANKS, ALASKA 99701-4679

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PHONE (907) 465-3600

February 6, 1990

HAND-DELIVERY

Honorable Sam Cotten
Alaska House of Representatives
P.O. Box V, State Capitol
Juneau, Alaska 99811

Re: Application of sec. 4, ch. 113,
SLA 1972 to SR 15

Dear Speaker Cotten:

You have asked whether sec. 4, ch. 113, SLA 1972 is still in effect. You have also asked whether it would permit school districts or regional education attendance area (REAA) school boards to opt out of the coverage of the Public Employment Relations Act (PERA) if that Act were made applicable to them in the manner provided in HCS SB 15(Fin).

This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

We addressed your first question in a January 25, 1990 letter to Representative Lyman Hoffman, a copy of which is attached: that provision is still in effect. However, it is not at all clear how sec. 4 would apply to school districts and REAAs if HSC SB 15(Fin) were enacted.

It seems fairly clear that REAAs meet the definition of "political subdivision" as that term is used in sec. 4, ch. 113, SLA 1972. See 1976 Op. Att'y Gen. No. 15 (March 26). Less clear is the status of school districts. AS 29.35 provides that certain municipal entities are school districts for the purpose of exercising the power to provide education. AS 29.35.160; AS 29.35.260. The relationship between school boards, elected to operate school districts and municipalities, is governed by AS 14.14.060. AS 14.14.060(g) provides as follows:

State law relating to teacher salaries and tenure, to financial support, to supervision by the department and other general laws relating to schools, governs the exercise of the functions by the borough. The school board shall appoint, compensate, and otherwise control all school employees and administration offices in accordance with this title.

On the one hand, it is the municipality which exercises the governmental power in question, education. On the other, the legislature has granted specific functions to local school boards. In its broadest sense, a political subdivision is a creature of the legislature, which "prescribes and curtails their authority." Kenai Peninsula Borough v. State, 532 P.2d 1019, 1023 (Alaska 1975). School boards have been granted the authority to control their personnel, based on AS 14.14.060(g). Further, school districts are included within a list of entities denominated as "political subdivisions" in AS 44.62.310(a), the open meeting act.

Whether REAA or municipal school boards are "legislative bodies" that would have the power to reject the coverage of PERA under sec. 4 is far from clear. Unfortunately, the legislative history is extremely sparse. sec. 4 was added to PERA on the floor of the Senate. PERA itself was a floor amendment to what had started out as a wage and hour bill introduced in the House. School districts had initially been included in the definition of "public employer" and noncertified school district employees in the definition of "public employees." Section 4 was then added, followed by noncertified school district employees and school districts being eliminated from PERA's definitions sections. See 1972 Senate Jour. 995-1007. Further complicating matters, portions of AS 14.20, the teacher collective bargaining law predates PERA, and REAAs postdate PERA. Thus, it is difficult to analyze how, if at all, relevant legislative history bears on this question.

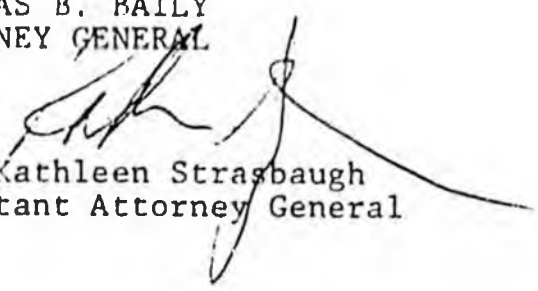
Also, as to municipal school districts, the balance of AS 14.14.060 uses language which suggests that the powers of a school board are more regulatory than "legislative," that is their powers resemble those of an agency. In addition, the relevant municipal government maintains some legislative power over the school boards, including such legislative type functions as the appropriation of local source funds. REAAs appear to enjoy more independence. It could be argued, based on sec. 6, Art X, of the Alaska Constitution, that the legislature is the relevant "legislative body." On the other hand, the common usage of "legislative body" would support the notion that the governing body of a political subdivision (an REAA) is such a body (the REAA

board). See generally Words & Phrases, "legislative body" (1966; 1989-90 Supp.). Cf. AS 44.62.310(a).

As noted in our letter to Representative Hoffman, any effort by a school district to opt out is likely to be dealt with by the courts on a case by case basis. It should be apparent from the foregoing discussion that the applicability of sec. 4 of PERA could become a fertile ground for litigation. The best way to be certain as to the applicability of the section, especially with respect to municipal school boards, is to clarify it in this legislation.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Kathleen Strasbaugh
Assistant Attorney General

KS:me

cc: Jeffrey Bush, AAG
Bob Evans, Deputy Chief of Staff
Office of the Governor

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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January 25, 1990
HAND DELIVERY

Rep. Lyman Hoffman, Co-Chair
House Finance Committee
Alaska House of Representatives
Capitol - Room 507-C
Juneau, AK 99811

Re: CSSB 15 (fin) am - school employee
collective bargaining

Dear Representative Hoffman:

You have asked the following questions regarding the above bill, which brings school employees under the coverage of AS 23.40.070-.250.

1. Whether the Public Employment Relations Act ("PERA") provision allowing political subdivisions to opt out of its coverage would apply to school districts and REAA's; and

2. Whether the Alaska Supreme Court's holding in Kenai Peninsula School District vs. Kenai Peninsula Education Association, 572 P.2d 416 (Alaska 1977) will be affected by the enactment of SB 15, which would repeal AS 14.20.550-.610.

1. Local governing bodies may still be able to opt out of PERA under this proposed legislation

Section 4 of Chapter 113, SLA 1972 provides:

This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

In a case in which an union of municipal employees challenged the newly formed Municipality of Anchorage's ordinance opting out of PERA, the Alaska Supreme Court held that Section 4 of PERA was permanent, and that there is no time limit on the exercise of the option, provided it is not done in a way which interferes with established rights of employees. Anchorage Municipal Employees

Association v. Municipality of Anchorage, 618 P.2d 575, 579 (Alaska 1980). A local governing body must also exercise its option promptly, and not to avoid an existing obligation to bargain. Id. See also State v. Petersburg, 538 P.2d 253, 267 (Alaska 1975), holding that the right of a local government to reject the act becomes subordinate to the rights provided by the act once the local government becomes aware of substantial organizational activities on the part of its employees.

A question not answered by the cases is whether a local governing body which was previously obliged to bargain (and had bargained) under AS 14.20 would have an opportunity to opt out nonetheless. The supreme court has held that a city which validly opted out of PERA, bargained for several years with employee organizations, and at the expiration of an agreement refused to bargain any further, did not become covered by PERA, having never suggested to its employees that they were entitled to its protections. City of Fairbanks vs. Fairbanks AFL-CIO, 623 P.2d 321, 323 (Alaska 1981). It would thus seem that if a local governing body acted in good faith, it may be permitted to opt out. However, the outcome of litigation is likely to depend heavily on the facts of the case, including any bargaining history.

Because of the short time we had to answer your request, we have not researched or addressed any problems there may be including school districts and REAA's in the definition of "political subdivision". That is not to suggest that there is a problem, only that we have not been able to research the issue.

2. The impact of the bill on the holding in Kenai is probably limited, but we cannot give a definitive answer.

Your memorandum also asks whether the passage of SB 15 would have any impact on the law established by the Alaska Supreme Court in Kenai Peninsula Borough School District v. Kenai Peninsula Education Association, 572 P.2d 416 (Alaska 1977). In the Kenai decision, the court interpreted the standard of negotiability under the teacher bargaining law (AS 14.20.550 - .610). (The court also upheld the constitutionality of teacher collective bargaining in the Kenai decision. This part of the decision, based largely on a body of cases upholding similar "delegations" of power, can be expected to apply to teacher bargaining under PERA.)

Because the reasoning set out in the Kenai decision would appear to apply to teacher bargaining under PERA, it seems likely that a court would follow the Kenai holding in determining whether issues are bargainable for teachers under PERA. Because teacher bargaining would occur under a new statute, a court could, however, re-evaluate the findings in Kenai, and it is possible that a court

might evaluate the negotiability of certain issues differently.

The statutory standard defining the topics that must be negotiated is phrased differently under PERA than under the teacher bargaining law. Under the teacher bargaining law, the duty to negotiate applies to "matters pertaining to their employment and the fulfillment of their professional duties" (AS 14.20.550). Under PERA, the duty applies to "matters of wages, hours, and other terms and conditions of employment" (AS 23.40.070). A court might rely on this difference in wording to modify the holding in Kenai. However, that semantical argument is likely to be less compelling than the more substantive discussion of the Kenai opinion involving educational policy versus economic impacts.

The Kenai opinion relies on court decisions from other states which interpret different statutory standards of negotiability. Although the opinion quotes those standards, it does not note any meaningful distinction either between those different standards or with the Alaska standard. Additionally, there is a considerable body of case law from other states which defines the negotiability of various teacher bargaining issues. This law seems to be based more on general analysis of educational policy versus economic impact, rather than fine distinctions in the phrasing of the statutory duty to negotiate.

In the Kenai decision, the court interpreted AS 14.20.610 in determining the scope of the districts' duty to negotiate. AS 14.20.610 states that nothing in the teacher bargaining law may be construed to abrogate or delegate the "legal responsibilities, powers, and duties of the school board, including its right to make final decisions on policies." With the enactment of SB 15, AS 14.20.610 will be repealed, but the assumption underlying that section would continue to apply. AS 14.20.610 does not create those "legal responsibilities, powers, and duties." Those responsibilities, powers, and duties are established independently by constitution and statute. Even with the repeal of AS 14.20.610, those "responsibilities, powers, and duties" remain intact. Again, according to the general body of teacher bargaining law from other states, teacher collective bargaining does not impair the rights and responsibilities of school boards.

Further, it is at least arguable that some of the concerns addressed by AS 14.20.610 can be included in PERA's exceptions to collective bargaining. AS 23.40.250(1) indicates that the parties must bargain wages, hours, and the terms and conditions of employment. Excluded from the definition of "terms and conditions of employment" are "the general policies describing the function and purposes of a public employer". AS 23.40.250(8). The function and purposes of a public school would arguably include

those matters included in AS 14.20.610.

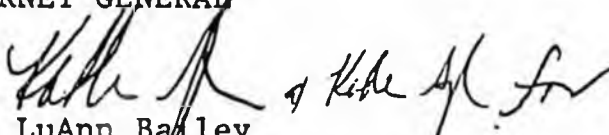
Despite the above comments, we are not in a position to predict how a court would interpret the duty to negotiate for teachers under PERA. Defining the boundaries of that duty, even with great specificity, is clearly within the power of the legislature. Indeed the court has gently suggested that this area could use legislative clarification. Kenai, 572 P.2d at 423.

Please let us know if you would like us to further research this question for you.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


LuAnn Bailey
Kathleen Strasbaugh
Assistant Attorney General

LB:KS:cl
(75)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: ^{CC} HCS CSSB 15(FIN) No. 3
PUBLISH DATE: HOUSE 2/6/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: "An Act including public school employees in the Public Employment Relations Act..." BRU: Labor Standards & Safety
Sponsor: Duncan, Zharoff, et al. Components: Wage & Hour
Requestor: House Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	64.4	64.4	64.4	64.4	64.4	64.4
TRAVEL	12.5	12.5	12.5	12.5	12.5	12.5
CONTRACTUAL	25.0	25.0	25.0	25.0	25.0	25.0
SUPPLIES	0.7	0.7	0.7	0.7	0.7	0.7
EQUIPMENT	2.4	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	105.0	102.6	102.6	102.6	102.6	102.6

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	105.0	102.6	102.6	102.6	102.6	102.6
FEDERAL FUNDS						
OTHER						
TOTAL	105.0	102.6	102.6	102.6	102.6	102.6

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact in FY 90.

Prepared by: Tom Stuart, Director Phone: 264-2452
Division: Labor Standards & Safety Date: 2/5/90

Approved by Commissioner: Jim Sampson Date: 2/5/90
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal Note Analysis
for
"An Act including public school employees..."

Under this bill, the Department of Labor will act as the Labor Relations Agency for all school districts in the state and be responsible for investigation of representation petitions, determination of appropriate units for collective bargaining purposes, monitoring elections and holding representation hearings.

Additionally, upon expiration of the contracts of the certificated employees who currently are covered for collective bargaining under Title 14 "Compiled School Law," a number of challenges to the representation by current employee unions can be expected. Such challenge activity, which includes investigation of petitions and all the other functions of organization, would also have to be handled by the agency. This activity is currently administered by the school boards affected.

One wage & hour investigator, located in Anchorage, will be required to conduct the investigations, monitor the elections, and hold informal hearings. In addition, one part-time clerical position will be required to provide technical support for the investigator.

In addition to the costs associated with the wage & hour investigator and clerical support position, there would be additional costs for legal support (\$10.0) and printing (\$1.5).

Assuming a July 1, 1990 effective date, line item costs for FY 91 would be as follows:

Personal Services	\$64.4
Travel	12.5
Contractual Svcs.	25.0
Commodities	.7
Equipment	<u>2.4</u>
	105.0

Of these costs, only the equipment cost of \$2.4 would be a one-time item.

Position Title Wage & Hour Investigator II		No. of Positions 1	Range/Step 18A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District
Justification				
Type of Expenditure		Amount		
1	2	3		
Salary	\$37,356			
Benefits	13,735			
Premium Pay				
Other				
Total Personal Services		\$51,091		
Travel		12,500		
Contractual		9,282		
Commodities		350		
Equipment		1,200		
Other				
Total Cost		\$74,423		
Funding Source for Total Cost				
Federal Receipts	1002			
G. P. Match	1003			
General Fund	1004	\$74,423		
GP Program Receipts	1005			
Other				

This position will conduct investigations and informal hearings of unfair labor practice complaints filed with this agency. The position will be responsible for monitoring school district representation elections and assisting school districts in complying with state and federal labor relations laws. The investigator will travel extensively throughout the state performing these investigations, hearings, and monitoring functions.

Contractual and commodity costs are average per-employee costs. Equipment would be a one-time expense for desk, chair, cabinets, etc.

**Request For
New Position**

Agency Labor
BRU Labor Standards & Safety
Component Wage & Hour

Page 3 of 4
Revised Date

FY 90

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8A	Barg. Unit GGU
Time Status PPT	Staff Months 6		Location Anchorage		Election District
Type of Expenditure			Amount		
1	2	3			
Salary	\$9,786				
Benefits	3,534				
Premium Pay					
Other					
Total Personal Services		\$13,320			
Travel		0			
Contractual		4,253			
Commodities		350			
Equipment		1,200			
Other					
Total Cost		\$19,123			
Funding Source for Total Cost					
Federal Receipts	1002				
G. P. Match	1003				
General Fund	1004	\$19,123			
GF Program Receipts	1005				
Other					
Justification					
<p>This position will provide clerical support (typing, answering telephone, mail handling, etc.) for the wage & hour investigator.</p> <p>Contractual and commodity costs are average per-employee costs. Equipment would be a one-time expense for desk, chair cabinets, etc.</p>					

**Request For
New Position**

Agency Labor
BRU Labor Standards & Safety
Component Wage & Hour

Page 4 of 4
Revised Date

FY 90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

No. 2
BILL VERSION: HCS CSSB 15(FIN)
PUBLISH DATE: HOUSE 2/6/90

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>Education</u>
Title: <u>Public school employees in the</u> <u>Public Employment Relations Act</u>	BRU: <u>K-12 Support</u>
Sponsor: <u>House Finance</u>	Components: <u>Foundation</u>
Requestor: <u>House Finance</u>	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mary Hakala Phone: 465-2800
Division: Commissioner's Office Date: 2/5/90

Approved by Commissioner: William G. Demmert Date: 2/5/90
Agency: Education

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)